



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#314-20
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: September 11, 2020
Land Use Action Date: December 8, 2020
City Council Action Date: December 14, 2020
90-Day Expiration Date: December 14, 2020

DATE: September 11, 2020

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Neil Cronin, Chief Planner for Current Planning
Michael Gleba, Senior Planner

SUBJECT: **Petition #314-20**, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow four single-family attached dwelling units in two structures, to allow a retaining wall in excess of 4 feet and to allow a driveway within ten feet of the side lot line at **23 Johnson Place**, Ward 4, Auburndale, on land known as Section 41 Block 7 Lot 14, containing approximately 16,767 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.2.4, 5.4.2.B, 6.2.3.B.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



23 Johnson Place

EXECUTIVE SUMMARY

The property at 23 Johnson Place consists of a 16,764 square feet lot in a Multi Residence 1 (MR1) zoning district improved with a 2 ½ story, two-family dwelling built circa 1880, an extensive concrete driveway and a disused pool with associated paved deck area. The petitioners propose to create four attached single-family dwellings. This would be done by razing the existing two-family dwelling and constructing the four single-family attached dwellings within two separate two-unit structures. Each of the four units would have attached basement level garages.

Per section 3.4.1, a special permit is required to construct attached single-family dwellings in the MR1 district. A special permit would also be needed to grant relief to allow for other aspects of the proposed project, namely, the construction of:

- retaining walls in a setback exceeding four feet in height (Section 5.4.2.B)
- a driveway within a single-family attached dwelling project fewer than ten feet from a side lot line (Section 6.2.3.B.2), in this case, the left (southwestern) side lot line.

The Planning Department notes that while the project could diversify Newton's housing stock, there are some concerns regarding the proposal, including the construction of ten-foot high retaining walls within the left setback, the functioning of the proposed driveway and parking facilities, and the adequacy and appropriateness of landscaping and screening.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- The site in a Multi-Residence 1 (MR1) district is an appropriate location for the proposed four single-family attached dwellings in two structures as designed, including retaining walls exceeding four feet in height within setbacks (§7.3.3.C.1);
- The proposed four single-family attached dwellings in two structures as designed, including retaining walls exceeding four feet in height within setbacks, will adversely affect the neighborhood (§7.3.3.C.2);
- The proposed four single-family attached dwellings in two structures as designed, including retaining walls exceeding four feet in height within setbacks, will create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4);
- Granting an exception to the provisions of Sec 6.2.3.B.2 requiring that no driveway be located within 10 feet of a side or rear lot line is appropriate as literal compliance is impractical due to the nature of the use, or the location, size, frontage, depth, shape,

or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety or protection of environmental features.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD:

A. Neighborhood and Zoning

The neighborhood, which is bordered to the south by the Massachusetts Turnpike, is predominantly residential with a mix of single- and two- family dwellings as well as a three-unit dwelling to the east (**Attachment A**). The subject property and the vicinity are zoned Multi Residence 1 (MR1), with a Single Residence 3 (SR3) district to the south across the Turnpike (**Attachment B**).

B. Site

The subject property consists of a 16,764 square foot rectangular lot with approximately 100 feet of frontage located on the west side of Johnson Place, across from the Massachusetts Turnpike to the south. Improved with a 2 ½ story, two-family dwelling built circa 1880, an extensive concrete driveway and a disused pool with associated paved deck area, the site is generally level except for the rear quarter of the lot, which has a rather steep downward grade of approximately 14 feet across the back portion of the lot. The property is accessed via the driveway along the left (southwest) side of the dwelling. The remaining portions of the site feature lawn area, mature trees and shrubs in various states of maintenance and a disused in-ground pool and associated paved deck area around it to the rear of the dwelling.

III. PROJECT DESCRIPTION AND ANALYSIS:

A. Land Use

If approved, the use would change from a two-family dwelling to four attached single-family dwellings (two in each of two structures).

B. Building and Site Design

The petitioner is proposing to create four attached dwelling units, two within each of two structures. The structures, with roofs that would feature multiple gables, would have 2 ½ stories and measure 36 feet in height, the maximums allowed for single-family attached dwellings. The proposed lot area per unit is 4,192 square feet, more than the minimum 4,000 square feet required.

The two structures would be separated by an approximately 10 foot-wide patio area. The right side of the property would be graded and landscaped. The left side of the property would be excavated to provide a new below-grade, approx. 26-foot wide driveway for access to the four basement-level garages. This would require the

installation of a retaining wall of varying heights up to approx. 9 ½ feet in height (as measured from the level of the proposed excavated, below-grade driveway). This wall would be located within about three feet, and run almost the entirety of, the left property line.

Regarding setbacks, single-family attached dwellings require 25-foot front, side and rear setbacks. All the setbacks meet this requirement, with the two side setbacks measuring 26.1 and 25.3 feet and the front and rear setbacks measuring 29.9 and 30.1 feet, respectively.

As proposed, open space on the lot would decrease from the existing 81.5% to 54.9% but remain above the required 50%. The property's lot coverage would be 24.3%, higher than the 9.9% that currently exists but less than the maximum 25% allowed.

Although the NZO does not establish floor area ratio (FAR) requirements for single family attached dwellings, the petitioner has indicated that the project's floor area ratio (FAR) is 0.51. The Planning Department notes, for comparison, that this is slightly more than the allowable FAR for single- and two- family structures on a similarly sized lot in an MR1 district which would be 0.48 with a possible bonus of 0.02 for new construction that complies with the "new lot" front, side and rear setback requirements of 30, 10 and 15 feet, respectively.

C. Parking and Circulation

The petitioners are proposing to provide eight parking spaces, two for each of the dwellings. Four spaces (one for each dwelling) would be within one-car garages located on the basement level of each dwelling, with an additional exterior space for each unit located in the below-grade paved area on the left side of the property referenced above.

The submitted plans do not indicate the location and/or orientation of the exterior parking stalls. As this paved area would also function as vehicular circulation space, and because zoning relief is needed to place driveway within ten feet of a side lot line, the Planning Department recommends that the petitioner provide such information in advance of or at the upcoming public hearing for review.

D. Landscaping, Screening and Lighting

It does not appear that a separate landscape plan was submitted with this petition. That said, the petitioner did provide an extensive listing of "suitable plants" for the project.

The Planning Department notes that providing a landscape plan showing proposed locations for specific trees, shrubs, etc. would be important given the scale of the proposed structures and their close proximity in certain locations to property lines and abutting residences. The Department recommends that the petitioner be prepared to address these issues in advance of or at the public hearing.

The Planning Department also recommends that the petitioner provide information about any proposed lighting for the property as well as the location of HVAC and other possible mechanicals.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking a Special Permit per §7.3.3 to:

- allow attached single-family dwellings (§3.2.4)
- allow a retaining wall in excess of 4 feet (§5.4.2.B)
- allow a driveway within 10 feet of the side lot line (§6.2.3.B.2)

B. Engineering Review

The Engineering Division Memorandum (**Attachment D**) provides an analysis of the proposal with regard to engineering issues. The memorandum raises some issues the petitioner should clarify and/or resolve, including the need for the petitioner to provide both updated stormwater calculations and an Operations & Maintenance for the proposed stormwater system. The memo also notes that all retaining walls over three feet in height would require a safety fence along the top.

C. Historic Preservation Review

On August 28, 2019, the Newton Historical Commission (NHC) found the existing structure “not preferably preserved” and required no further review.

V. PETITIONER’S RESPONSIBILITIES

The petitioner should respond to the issues raised in this memorandum and other questions raised at the public hearing as necessary. Written responses to all significant issues should be provided for analysis by the Planning Department prior to being scheduled for additional public hearings. The Planning Department will prepare an updated memo prior to any future public hearings.

ATTACHMENTS:

- Attachment A:** Land Use Map
- Attachment B:** Zoning Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** Engineering Review Memorandum

ATTACHMENT A



Land Use

23 Johnson Place

*City of Newton,
Massachusetts*

Land Use

Land Use

-  Single Family Residential
-  Multi-Family Residential



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 Feet




Map Date: September 04, 2020

ATTACHMENT B

Zoning

23 Johnson Place

*City of Newton,
Massachusetts*

-  Single Residence 3
-  Multi-Residence 1
-  Multi-Residence 2

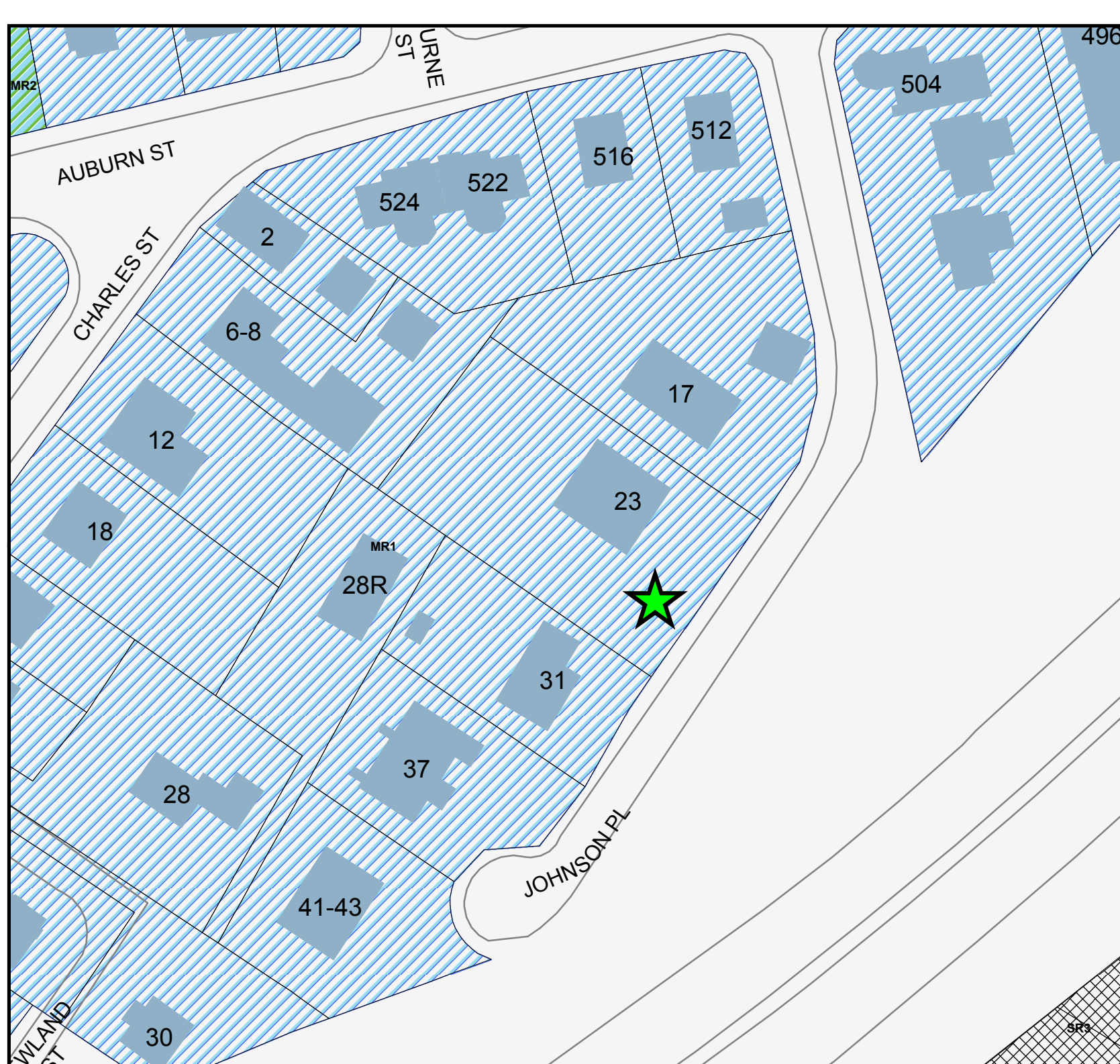


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75
Feet

Map Date: September 04, 2020





Ruthanne Fuller
Mayor

ATTACHMENT C

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: April 21, 2020

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: Michael Lohin, Creating Homes LLC
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to allow four single-family attached dwellings in two structures

Applicant: Michael Lohin	
Site: 23 Johnson Place	SBL: 41007 0014
Zoning: MR1	Lot Area: 16,767 square feet
Current use: Two-family dwelling	Proposed use: Four single-family attached dwellings

BACKGROUND:

The property at 23 Johnson Place consists of 16,764 square feet and is improved with a two-family dwelling built circa 1880 in the MR1 zoning district. The petitioners propose to raze the existing two-family dwelling, and construct two separate two-unit structures, creating four attached dwellings in two separate structures.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Michael Lohin, dated 3/9/2020
- Site Plan, signed and stamped by Scott C. Lynch, surveyor, dated 9/4/2019
- Architectural Plans Elevations, prepared by Timothy Mulligan, architect, dated 3/7/2020
- FAR worksheet, submitted 3/9/2020

ADMINISTRATIVE DETERMINATIONS:

1. The petitioners propose to raze the existing two-family dwelling and construct four single-family attached dwellings within two separate structures in the Multi Residence 1 zoning district. Per section 3.4.1, a special permit is required to construct attached dwellings in the MR1 district.
2. Per section 5.4.2.B, a retaining wall of four feet or more in a setback requires a special permit. The petitioner proposes retaining walls around the perimeter of the property with four feet in height at the rear lot line, requiring a special permit.
3. The petitioners propose to construct a driveway along the southwestern property boundary, less than ten feet from the side lot line. Per section 6.2.3.B.2, a special permit is required to locate a driveway within ten feet of a side or rear lot line within a single-family attached dwelling project.

MR1 Zone	Required	Existing	Proposed
Lot Size	15,000 square feet	16,767 square feet	No change
Frontage	80 feet	98 feet	No change
Setbacks <ul style="list-style-type: none">• Front• Side• Side• Rear	25 feet 25 feet 25 feet 25 feet	49.5 feet 10 feet NA 76.2 feet	29.9 feet 25.3 feet 26.1 feet 30.1 feet
Building Height	36 feet	NA	36 feet
Max Number of Stories	2.5 (3 by special permit)	2.5	2.5
Lot Coverage	25%	9.9%	24.3%
Open Space	50%	81.5%	54.9%
Lot Area Per Unit	4,000 square feet	8,384 square feet	4,192 square feet

See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Site</i>	<i>Action Required</i>
§3.2.4	To allow attached single-family dwellings	S.P. per §7.3.3
§5.4.2.B	To allow a retaining wall in excess of 4 feet	S.P. per §7.3.3
§6.2.3.B.2	To allow a driveway within 10 feet of the side lot line	S.P. per §7.3.3

ATTACHMENT D

CITY OF NEWTON Department of Public Works ENGINEERING DIVISION

MEMORANDUM

To: Council Rick Lipof, Land Use Committee Chairman

From: John Daghlion, Associate City Engineer

Re: Special Permit – 23 Johnson Place

Date: September 8, 2020

CC: Barney Heath, Director of Planning
Jennifer Caira, Deputy Director
Lou Taverna, PE City Engineer
Nadia Khan, Committee Clerk
Neil Cronin, Chief Planner
Michael Gleba, Sr. Planner

In reference to the above site, I have the following comments for a plan entitled:

Proposed Construction
23 Johnson Place Newton, MA
Prepared by: Hayes & Associates
Dated: July 15, 2020

Executive Summary:

This application entails the demolition of the existing building and the erection of two buildings having a total of 4-units. The site is 16,767 square feet [0.38 acre] with 104-feet of frontage, and surrounded by residential homes long the north, east, and westerly property lines. The high point of the lot is at elevation 62-feet near Johnson Place, and slopes gently towards rear of the house then slopes downward to a low point of elevation 48-feet at approximately 1:1 slope.

The existing driveway will be removed and landscaped. A new driveway will be provided on the left side of the proposed buildings. This area will be significantly excavated to accommodate garages that are proposed at the basement level for each unit. A segmental block retaining wall will facilitate the grade change and lowering of this area to accommodate the garage/basement

level. The wall runs along the westerly property line from the frontage to approximately 20 feet from the rear lot line at which point it turns 90-degrees and connects to the foundation of the new building, the wall has a varying height and at its highest point is over 7-feet. This wall acts as a backstop for stormwater runoff from sheeting onto abutting property. Near the rear property line, a block segmental retaining wall between 3-4' high will be constructed to provide a level area for a lawn and a backyard. All walls over 3-feet in height will require a safety fence along the top of the wall.

The engineer of record has designed a stormwater collection and infiltration system to capture and infiltrate all the runoff from the new development, although the methodology is correct, the City's 100-year storm event is 8.78-inches over a 24 hour period, not 8.62-inches as reported; updated calculations will be required. Additionally, an Operations & Maintenance Plan is needed for the long-term performance of the stormwater system which should include intervals for: inspections, cleaning, and sweeping of the driveway.

New water & sanitary sewer services will be provided for the new units. Upon completion and installation of all utilities new concrete sidewalks granite curbing shall be installed.

Construction Management:

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction materials and equipment, parking for construction workers vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of the general contractor. It shall also address anticipated dewatering during construction, site safety & stability, siltation & dust control, and noise impact to abutters.
2. Stabilized driveway construction entrance(s) will be required for the duration of the construction which will provide a truck wash to prevent tracking of mud and silt onto City streets.
3. Catch basins within and downstream of the construction zone will be required to have siltation control installed for the duration of the project and must be identified on the site plan.

Drainage:

1. An Operations and Maintenance (O&M) plan for the long-term maintenance of the proposed stormwater management facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by the applicant/property owner,

incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.

2. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, trench drains, and pipe(s) are the sole responsibility of the property owner(s).

Environmental:

1. Has a 21E Investigation and report been performed on the site, if so, copies of the report should be submitted to the Newton Board of Health and Engineering Division.
2. Are there any existing underground oil or fuel tanks? Have they been removed, if they have been, evidence of the proper removal should be submitted to the Newton Fire Department and the Board of Health.

Sanitary Sewer & Domestic Water Service(s):

1. Existing water and sewer services to building(s) shall cut and capped at the respective mains and completely removed from the main(s) and its entire length and properly backfilled. The Engineering Division must inspect and approve this work, failure to having this work inspected will result in delay of issuance of the new Utility Connection or issuance of a Certificate of Occupancy.
2. All new sewer service(s) shall be pressure tested in accordance to the City Construction Specifications & Standards and inspected via Closed Circuit Television CCTV inspection after installation is completed. A copy of the video inspection and written report shall be submitted to the City Engineer or his representative. The sewer service will NOT be accepted until the two methods of inspection are completed AND witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until these tests are completed to the satisfaction of the City Engineer.
3. All sanitary sewer manhole(s) shall be vacuum tested in accordance to the City's Construction Standards & Specifications, the sewer service and manhole will NOT be accepted until the manhole(s) pass the testing requirements. All testing MUST be witnessed by a representative of the Engineering Division. A Certificate of Occupancy will not be recommended until this test is completed to the satisfaction of the City Engineer and a written report of the test results is submitted to the City Engineer.

4. With the exception of natural gas service(s), all utility trenches within the right of way shall be backfilled with Control Density Fill (CDF) Excavatable Type I-E up to within 18-inches of the asphalt binder level, after which Dense Grade Gravel compacted to 95 % Proctor Testing shall be placed over the CDF. Details of this requirement is the Engineering Division website "Standard Construction Details".
5. All water services shall be chlorinated, and pressure tested in accordance to the AWWA and the City Construction Standards & Specifications prior to coming online. These tests MUST be witnessed by a representative of the Engineering Division.
6. Approval of the final configurations of the water service(s) shall be determined by the Utilities Division, the engineer of record shall submit a plan to the Director of Utilities for approval.

General:

1. All trench excavation shall comply with Massachusetts General Law Chapter 82A, Trench Excavation Safety Requirements, and OSHA Standards to protect the general public from unauthorized access to unattended trenches or excavations. Trench Excavation Permit is required prior to any construction. This applies to all trenches on public and private property. *This note shall be incorporated onto the final plans.*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor of record is responsible for contacting the Engineering Division and scheduling an appointment 48-hours prior to the date when the utilities will be made available for an inspection of water services, sewer services and drainage system installation. The utility in question shall be fully exposed for the Inspector to view, backfilling shall only take place when the City Engineer's Inspector has given their approval. *This note shall be incorporated onto the final plans.*
4. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to ANY construction.
5. Before requesting a Certificate of Occupancy, an As Built plan shall be submitted to the Engineering Division in both digital and paper format. The plan shall show all utilities and final grades, any easements and improvements and limits of restoration. The plan shall include profiles of the various new utilities including but not limited to rim & invert elevations (City of Newton Datum), slopes of pipes, pipe materials, and swing ties from permanent building corners. The as built shall be stamped by both a Massachusetts Registered Professional Engineer and Registered Professional Land Surveyor. Once the As built plan is received the Engineering Division shall perform a final site inspection and

then make a determination to issue a Certificate of Occupancy. *This note shall be incorporated onto the final plans.*

6. All site work including trench restoration, sidewalk, curb ,apron and loam border (where applicable) shall be completed before a Certificate of Occupancy is issued. *This note shall be incorporated onto the final plans.*
7. The contractor of record shall contact the Newton Police Department 48-hours in advanced and arrange for Police Detail to help residents and commuters navigate around the construction zone.
8. If any changes from the final approved design plan that are required due to unforeseen site conditions, the contractor of record shall contact the design engineer of record and submit revised design and stamped full scale plans for review and approval prior to continuing with construction.
9. *The engineer of record shall add the following attestation to the plans when applying for a building permit:*

I certify that the construction so shown was inspected prior to backfill and that all work conforms with the Approved Plan and meets or exceeds the City of Newton Construction Standards.

Signature

Note: If the plans are updated it is the responsibility of the applicant to provide all City Departments [ISD, Conservation Commission, Planning and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns, please feel free to contact me at 617-796-1023.